

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	File Nos.	CUID Nos.
	)	EB-02-TC-021	SC0065 (Laurens)
Cencom Cable Entertainment, Inc.	)	EB-02-TC-041	SC0123 (Mauldin)
Cencom Cable Television, Inc.	)	EB-02-TC-022	MO0079 (Florissant)
	)	EB-02-TC-076	CA0132 (La Canada)
	)	EB-02-TC-079	CA0875 (Alhambra)
	)	EB-02-TC-027	CA0899 (Walnut)
Complaints Regarding	)	EB-02-TC-081	CA1093 (Pasadena)
Cable Programming Services Tier Rates	)	EB-02-TC-090	NC0024 (Lenoir)
and Petition for Reconsideration	)	EB-02-TC-092	NC0148 (Lenoir)

ORDER

Adopted: July 16, 2002

Released: July 17, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order, we consider a petition for reconsideration² ("Petition") of Cable Services Bureau Order, DA 95-938 ("Prior Order"),³ filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").⁴ The Prior Order resolved complaints filed against the rates charged by Operator for its cable programming services tier ("CPST") in the communities referenced above through May 14, 1994. In the Prior Order, the Cable Services Bureau stated that its findings "do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations."⁵ Subsequently, the Cable Services Bureau issued orders resolving complaints against Operator's CPST rates beginning May 15, 1994, and found those rates to be reasonable in the communities of Pasadena,⁶ Walnut,⁷ Alhambra⁸ and La Canada.⁹ The Cable Services

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² Operator originally filed its petition as an application for review. However, by letter dated March 5, 2002, Operator requested that we treat its application as a petition for reconsideration.

³ *See In The Matter of Cencom Cable Entertainment, Inc. and Cencom Cable Television, Inc.*, DA 95-938, 11 FCC Rcd 2573 (CSB 1995).

⁴ The term "Operator" includes Operator's successors and predecessors in interest.

⁵ Prior Order at n. 2.

⁶ *See In the Matter of Charter Communications Entertainment II, LP*, DA 98-463, 13 FCC Rcd 10573 (CSB 1998).

⁷ *See In the Matter of Charter Communications Entertainment II, LP*, DA 98-452, 13 FCC Rcd 10551 (CSB 1998).

⁸ *See In the Matter of Charter Communications Entertainment II, LP*, DA 98-462, 13 FCC Rcd 10570 (CSB 1998).

Bureau found the CPST rates to be unreasonable in the community of Lenoir until January 1, 1995 ("Lenoir Order").¹⁰ In this Order we deny Operator's Petition in part, grant it in part, and address the reasonableness of Operator's CPST rates in the remaining communities beginning May 15, 1994.

2. Under the provisions of the Communications Act¹¹ that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")¹² and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),¹³ and the Commission's rules implementing the legislation ("Interim Rules"),¹⁴ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.¹⁵ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.¹⁶

3. During the first phase of rate regulation, from September 1, 1993 until May 15, 1994, the benchmark rate analysis and comparison with an operator's actual rates were calculated using the FCC Form 393.¹⁷ The benchmark formula was revised, effective May 15, 1994.¹⁸ Systems first becoming subject to rate regulation after May 15, 1994 were required to justify their initial regulated rates using forms in the FCC Form 1200 series.¹⁹ Systems against which rate complaints were still pending when the Commission revised its benchmark formula were required to recalculate their benchmark rates as of May 15, 1994 using the FCC Form 1200.²⁰ The Commission's rules provide for a refund liability deferral period, if timely requested by an operator, beginning May 15, 1994 and ending July 14, 1994, for any overcharges resulting from the operator's calculation of a new maximum permitted rate on its FCC Form 1200.²¹ However, an operator will incur refund liability from May 15, 1994 through July 14, 1994 for any CPST rates charged above the FCC

⁹ See *In the Matter of Charter Communications Entertainment II, LP*, DA 98-8, 13 FCC Rcd 10171 (CSB 1998).

¹⁰ See *In the Matter of Cencom Cable Television, Inc.*, DA 97-1210, 12 FCC Rcd 23386 (CSB 1997).

¹¹ 47 U.S.C. §543(c) (1996).

¹² Pub. L. No. 102-385, 106 Stat. 1460 (1992).

¹³ Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁴ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

¹⁵ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

¹⁶ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

¹⁷ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5755-56, 5766-67, 5881-83 (1993).

¹⁸ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 9 FCC Rcd 4119 (1994).

¹⁹ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

²⁰ *Id.*

²¹ See 47 C.F.R. § 76.922(b)(6)(ii).

Form 393 maximum permitted rate. Cable operators may update the initial FCC Form 1200 benchmark rate calculation by filing an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.²²

4. In its Petition, Operator raises a number of issues that have been addressed in previous orders. Operator first argues that the Cable Services Bureau erred when imputing normalized taxes to Operator's customer equipment costs prior to unbundling those costs from Operator's service rates. The Cable Services Bureau previously addressed this issue at length in *Suburban Cable*.²³ The discussion in that case is directly on point and need not be repeated here. The Cable Services Bureau concluded that the benchmark rate methodology contemplates the unbundling of normalized taxes and it would be arbitrary and inconsistent for the Commission to build normalized taxes into the pricing of tier offerings and only unbundle actual taxes attributable to equipment costs. We conclude here, as the Cable Services Bureau did in *Suburban Cable*, that it was not error for the Cable Services Bureau to impute normalized taxes to Operator's customer equipment costs prior to unbundling those costs from Operator's service rates.

5. The remaining issues raised by Operator in its Petition, concerning the adjustment of its inflation factor, offsetting of overcharges, sufficiency of the explanations of calculations and allegations of retroactive ratemaking, were all thoroughly addressed by the Commission in *Cencom Cable Income Partners* ("*Cencom*").²⁴ For all the reasons stated in that order, which we do not need to repeat here, we reject Operator's arguments concerning these issues. However, as in *Cencom*, we will allow Operator an inflation adjustment period equal to the number of whole months from September 1992 to the date Operator was required to file its FCC Form 393 in each community, in accordance with the public notice issued May 2, 1995.²⁵ As a result of our adjustment, we find the total overcharges for the FCC Form 393 review period to be *de minimis*, and it would not be in the public interest to order refunds, in the communities of Laurens, Mauldin, Lenoir, Florissant and Alhambra. As Operator filed refund deferral letters in all of these communities, we will review the reasonableness of subsequent CPST rates in these communities beginning July 15, 1994, to the extent they have not been previously reviewed by the Cable Services Bureau, and modify the Prior Order and the Lenoir Order to be consistent with our review.

6. First, however, we address the FCC Form 393 period for the remaining communities where the total overcharges were not *de minimis*. Our adjustment to Operator's inflation adjustment period for each community results in revised maximum permitted rates ("MPRs") and refund liability as follows, and we modify our Prior Order accordingly.²⁶

²² *Id.*

²³ *In the Matter of Suburban Cable TV, Inc.*, DA 97-2032, 13 FCC Rcd 13111 (CSB 1997). See also, *In the Matter of Charter Communications*, DA 02-637 (CSB released March 20, 2002).

²⁴ *In the Matter of Cencom Cable Income Partners II, LP*, FCC 97-205, 12 FCC Rcd 7948 (1997).

²⁵ See Public Notice "Cable Services Bureau Announces Policy Regarding Inflation Adjustment on Form 393," DA 95-999 (1995).

²⁶ These findings are based solely on the representations of Operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein. Information regarding the specific adjustments made to

Community/ CUID No.	Line <u>124</u>	Line <u>125</u>	Prior MPR	Revised MPR	Actual Rate	Monthly Overcharge	Refund ²⁷ Period
La Canada/ CA0132	15	15	\$10.98	\$11.08	\$11.40	\$0.32	12/22/93- 5/14/94
Walnut/ CA0899	12	12	\$10.98	\$11.01	\$11.40	\$0.39	9/3/93- 5/14/94
Pasadena/ CA1093	16	15	\$10.98	\$11.10	\$11.40	\$0.30	1/5/94- 5/14/94

7. Next, we address the reasonableness of Operator's CPST rates beginning July 15, 1994 in the communities of Laurens, Mauldin, Lenoir and Florissant. In Laurens and Mauldin, our review reveals that the total overcharges for the FCC Form 1200 review period are *de minimis* and it would not be in the public interest to order refunds. Our adjustment to Operator's FCC Form 393 in the community of Lenoir did not effect the MPRs calculated by the Cable Services Bureau in the Lenoir Order. Therefore Operator's refund liability in that community beginning July 15, 1994 remains as follows:

Community/ CUID No.	Prior MPR	Revised MPR	Actual Rate	Monthly Overcharge	Refund Period
Lenoir/ NC0024 and NC0148	\$15.43	\$15.43	\$16.32	\$0.89	7/15/94-9/30/94
	\$15.65	\$15.65	\$16.32	\$0.67	10/1/94-12/31/94

8. Finally, we address the reasonableness of the CPST rates in Florissant beginning July 15, 1994. Upon review of Operator's FCC Form 1200, we adjusted Line G2 (Monthly Charge per Tier as of 9/30/92) of the FCC Form 1200 from \$12.15 to \$10.65 to match Worksheet 2, Line 201, Column B (Tier Charge (Monthly) - Tier 2) of the FCC Form 393 and the rate card provided by Operator for the September 30, 1992 CPST rate.²⁸ This resulted in reducing the FCC Form 1200 MPR from \$11.46 to \$10.85. This adjustment was carried through to each of Operator's subsequent FCC Form 1210 update filings, summarized as follows:

Operator's FCC Forms can be found in the public files for the above-referenced community which are available in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

²⁷ The refund periods for the FCC Form 393 overcharges begin on the date that the first valid complaint was filed with the Commission against the CPST rates charged by Operator for each specific community.

²⁸ Line 201, found on Worksheet 2 ("Calculation of Rates in Effect on September 30, 1992 and Benchmark Comparison") of the FCC Form 393 and Line G2 of the FCC Form 1200 both require the entry of the monthly tier charge as of September 30, 1992.

<u>Community/ CUID No.</u>	<u>Form 1210 Period</u>	<u>Calculated MPR</u>	<u>Revised MPR</u>	<u>Actual Rate</u>	<u>Monthly Overcharge</u>	<u>Refund Period</u>
Florissant/ MO0079	4/1-6/30 1994	\$11.85	\$11.24	\$11.85	\$0.61	7/15/94-9/30/94
	7/1-9/30 1994	\$12.01	\$11.40	\$12.01	\$0.61	10/1/94-12/31/94
	10/1-12/31 1994	\$12.31	\$11.69	\$12.31	\$0.62	1/1/95-3/31/95
	1/1-3/31 1995	\$12.47	\$11.85	\$12.47	\$0.62	4/1/95-9/30/95
	4/1-9/30 1995	\$13.35	\$12.18	\$13.35	\$1.17	10/1/95-12/31/95
	10/1-12/31 1995	\$14.20	\$13.47	\$13.35	none	none

Because Operator's actual CPST rates, effective July 15, 1994 through December 31, 1995, exceed its MPRs, we find Operator's actual CPST rates, effective July 15, 1994 through December 31, 1995, to be unreasonable. We find Operator's actual CPST rate of \$13.35, effective January 1, 1996, to be reasonable.

9. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Operator is GRANTED IN PART AND DENIED IN PART TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that *In the Matter of Cencom Cable Entertainment, Inc. and Cencom Cable Television, Inc.*, DA 95-938, 11 FCC Rcd 2573 (CSB 1995) and *In the Matter of Cencom Cable Television, Inc.*, DA 97-1210, 12 FCC Rcd 23386 (CSB 1997) ARE MODIFIED TO THE EXTENT INDICATED HEREIN.

11. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rates, charged by Operator in the communities of La Canada, CA (CUID No. CA0132), Walnut, CA (CUID NO. CA0899) and Pasadena, CA (CUID NO. CA1093), effective from the date that the first valid complaint was filed with the Commission for each community through May 14, 1994, ARE UNREASONABLE.

12. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rates, charged by Operator in the community of Lenoir, NC (CUID Nos. NC0024 and NC0148), effective July 15, 1994 through December 31, 1994, ARE UNREASONABLE.

13. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rates, charged by Operator in the community of

Florissant, MO, (CUID No. MO0079), effective July 15, 1994 through December 31, 1995, ARE UNREASONABLE.

14. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the communities of La Canada, CA (CUID No. CA0132), Walnut, CA (CUID NO. CA0899) and Pasadena, CA (CUID NO. CA1093), that portion of the amount paid in excess of the maximum permitted CPST rates set forth in this order for each community per month (plus franchise fees), plus interest to the date of the refund, for the period from the date that the first valid complaint was filed with the Commission for each community through May 14, 1994.

15. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community of Lenoir, NC (CUID Nos. NC0024 and NC0148), that portion of the amount paid in excess of the maximum permitted CPST rates set forth in this order per month (plus franchise fees), plus interest to the date of the refund, for the period from July 15, 1994 through December 31, 1994.

16. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community of Florissant, MO, (CUID No. MO0079), that portion of the amount paid in excess of the maximum permitted CPST rates set forth in this order per month (plus franchise fees), plus interest to the date of the refund, for the period from July 15, 1994 through December 31, 1995.

17. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated periods, and shall within 30 days of the release of this Order, file a report with the Chief, Enforcement Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

18. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the complaints referenced herein against the CPST rates charged by Operator in the communities referenced above ARE GRANTED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau